

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

PLANNED PARENTHOOD SOUTH)	
ATLANTIC, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	
JOSHUA STEIN, <i>et al.</i> ,)	Case No. 1:23-cv-00480-CCE-LPA
)	
Defendants,)	
)	
and)	
)	
PHILIP E. BERGER, <i>et al.</i> ,)	
)	
Intervenor-Defendants.)	

AMENDED JOINT RULE 26(f) REPORT (LOCAL RULE 16.2)

1. Pursuant to Fed. R. Civ. P. 26(f) and LR16.1(b), a meeting was held by videoconference on September 11, 2023, and was attended by Jaclyn Maffetore for all Plaintiffs; by Hannah Swanson, Anjali Salvador, and Helene Krasnoff for Plaintiff Planned Parenthood South Atlantic; by Brigitte Amiri for Plaintiff Dr. Beverly Gray; by Sripriya Narasimhan and South Moore for Defendant Attorney General Joshua H. Stein; by Michael T. Wood for Defendant Secretary Kody H. Kinsley; by Elizabeth Curran O'Brien for Defendant District Attorneys Todd M. Williams, Spencer B. Merriweather III, Avery Crump, Jeff Nieman, Satana Deberry, William West, Lorrin Freeman, and Benjamin R. David; by Kevin Guy Williams for Defendant District Attorney Jim O'Neill; by Michael E. Bulleri for Defendants Michaux R. Kilpatrick, MD, PhD and Racquel Ingram, PhD, RN;

and by W. Ellis Boyle, Erin Hawley, and Julia Payne for Intervenor-Defendants Senator Philip E. Berger and Representative Timothy K. Moore.

Reflecting their agreements at this Rule 26(f) conference on September 11, 2023, the parties filed a joint Rule 26(f) report, a Local Rule 5.5 report, and a joint motion to continue the Local Rule 16.1 initial pretrial conference originally scheduled for September 25, 2023. DE 76, 77, 78. On September 19, 2023, by text order, the Court granted in part the joint motion and continued the Local Rule 16.1 initial pretrial conference to October 30, 2023.

This Amended Joint Rule 26(f) Report supplements the parties' September 15, 2023 joint Rule 26(f) report.

2. Discovery Plan. On September 30, 2023, the Court granted Plaintiffs' amended motion for a preliminary injunction. DE 80. In light of the Court's preliminary injunction order, the parties propose to the Court the following amended discovery plan:

Pursuant to the Court's July 6, 2023 Scheduling Order, the parties completed expedited discovery related to the preliminary injunction motion on September 6, 2023. During this expedited discovery period, Plaintiffs and Intervenor-Defendants exchanged written discovery requests and responses, produced documents, and conducted depositions of the four witnesses who submitted declarations in support of the preliminary injunction briefing. Per the Court's September 19 order continuing the Rule 16.1 initial pretrial conference until October 30, 2023, no further discovery has taken place since September 6, 2023, as the parties were awaiting the Court's decision on Plaintiffs' amended motion

for a preliminary injunction.

The Court's July 6, 2023 Scheduling Order further provides that any additional discovery needed for dispositive motions or trial shall be concluded by January 31, 2024.

The parties agree that:

Given the substantial discovery already completed to date, the parties need not exchange initial disclosures under Fed. R. Civ. P. 26(a)(1).

Additional discovery may be needed on the following subjects: expert testimony on topics such as the comparative safety of abortion and other medical procedures, stigma experienced by abortion patients and abortion providers in North Carolina, the characteristics of North Carolina hospitals and licensed abortion clinics, and screening for and management of ectopic pregnancy.

Discovery shall be placed on a case-management track established in LR 26.1. The parties agree that the appropriate plan for this case is that designated in LR 26.1(a) as Complex.

The date for the completion of all discovery (general and expert) has been set by the Court for January 31, 2024. DE 37 at 3.

Stipulated modifications to the case management track include: the transcripts of depositions already taken in this matter shall remain part of the record, and the parties need not re-depose those witnesses as to matters already covered. Any further deposition of an already-deposed witness shall be limited to three hours. The number of discovery requests authorized by LR 26.1 shall be increased to 35 per party total. These totals shall be inclusive

of, and not in addition to, any discovery requests already issued.

The parties agree to exchange reports required by Rule 26(a)(2)(B) and disclosures required by Rule 26(a)(2)(C) according to the following schedule:

- Plaintiffs' reports and disclosures due November 13, 2023.
- Defendants' and Intervenor-Defendants' reports and disclosures due December 11, 2023.
- Plaintiffs' rebuttal reports and disclosures, if any, due January 8, 2023.

Supplementations will be as provided in Rule 26(e) or as otherwise ordered by the court.

3. Mediation. Given the claims in this case and the procedural posture, the parties agree that this case is not a good candidate for negotiated resolution.

4. Preliminary Deposition Schedule. The parties previously agreed to and completed the following deposition schedule:

- August 29, 2023: Dr. Christy M. Boraas Alsleben
- August 30, 2023: Dr. Monique Chireau Wubbenhorst
- August 31, 2023: Dr. Susan Bane
- September 1, 2023: Dr. Katherine Farris

To the extent further or supplemental depositions are requested, the parties will confer regarding a schedule that ensures all such depositions conclude before the end of discovery on January 31, 2024.

5. Other items.

Plaintiffs should be allowed until November 13, 2023, to request leave to join additional parties or amend pleadings.

Defendants and Intervenor-Defendants should be allowed until December 11, 2023 to request leave to join additional parties or amend pleadings.

After these dates, the Court will consider, *inter alia*, whether the granting of leave to join additional parties or amend pleadings would delay trial.

Considering the likelihood of dispositive cross-motions following the close of discovery, the parties respectfully propose the following stipulated briefing deadlines, which modify the standard summary-judgment briefing cadence by consolidating and streamlining briefing on cross-motions:

- March 1, 2024: Plaintiffs' motion for summary judgment and memorandum in support due, limited to 6,250 words. LR 56.1(c).
- April 1, 2024: Defendants' and Intervenors' consolidated opposition and cross-motion for summary judgment brief due, limited to 12,500 words. *See* LR 56.1(c).
- May 1, 2024: Plaintiffs' consolidated cross-opposition and reply brief due, limited to 9,375 words. *See* LR 56.1(c).
- June 1, 2024: Defendants' and Intervenors' cross-reply brief due, limited to 3,125 words. LR 56.1(c).

The parties have discussed special procedures for managing this case, including reference of the case to a Magistrate Judge on consent of the parties under 28 U.S.C. §

636(c), or appointment of a master. The parties do not consent to trial before a Magistrate Judge under 28 U.S.C. § 636(c).

Trial of the action is expected to take approximately 2–3 days. A jury trial has not been demanded.

The parties discussed whether the case will involve the possibility of confidential or sealed documents. Because written discovery during the expedited discovery period involved the disclosure of confidential and proprietary materials, the parties have entered into a joint protective agreement and addendum governing the confidentiality of certain documents exchanged during discovery.

This case may involve confidential or sealed documents and the parties have separately filed a LR 5.5 Report. DE 77.

Date: October 24, 2023

Respectfully submitted,

FOR ALL PLAINTIFFS:

/s/ Kristi Graunke

Kristi Graunke

N.C. State Bar 51216

kgraunke@acluofnc.org

American Civil Liberties Union
of North Carolina Legal Foundation
P.O. Box 28004
Raleigh, NC 27611
Phone: 919-354-5066
Fax: 919-869-2075

FOR DEFENDANT DISTRICT
ATTORNEY JIM O'NEILL:

/s/ Kevin Guy Williams

N.C. State Bar 25760

kwilliams@belldavispitt.com

Bell Davis & Pitt, P.A.
P.O. Box. 21029
Winston-Salem, NC 27120-1029
Phone: 336-714-4150
Fax: 336-722-8153

FOR DEFENDANT ATTORNEY
GENERAL JOSHUA H. STEIN:

/s/ Sripriya Narasimhan

Sripriya Narasimhan

Deputy General Counsel

N.C. State Bar 57032

snarasimhan@ncdoj.gov

Attorney General Joshua H. Stein
114 W Edenton Street
Raleigh, NC 27603
Tel: (919) 716-6421

FOR DEFENDANT SECRETARY
KODY H. KINSLEY:

/s/ Michael T. Wood

N.C. State Bar 32427

mwood@ncdoj.gov

North Carolina Dept. of Justice
P.O. Box 629
Raleigh, NC 27602
Phone: 919-716-6900
Fax: 919-716-6758

FOR DEFENDANTS DISTRICT
ATTORNEY TODD M. WILLIAMS,
ET AL.:

/s/ Elizabeth Curran O'Brien

N.C. State Bar 28885
ebrien@ncdoj.gov

North Carolina Dept. of Justice
P.O. Box 629
Raleigh, NC 27602
Phone: 919-716-6900
Fax: 919-716-6758

FOR DEFENDANTS MICHaux R.
KILPATRICK, MD, PHD and
RACQUEL
INGRAM, PHD, RN:

/s/ Michael E. Bulleri
N.C. State Bar 35196
mbulleri@ncdoj.gov

North Carolina Dept. of Justice
P.O. Box 629
Raleigh, NC 27602
Phone: 919-716-6900
Fax: 919-716-6758

FOR INTERVENOR-DEFENDANTS
SENATOR PHILIP E. BERGER AND
REPRESENTATIVE TIMOTHY K.
MOORE:

/s/ W. Ellis Boyle
N.C. State Bar 33826
weboyle@wardsmith.com

Ward & Smith, P.A.
P.O. Box 33009
Raleigh, NC 27636
Phone: 919-277-9187

CERTIFICATE OF SERVICE

I hereby certify that, on October 24, 2023, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which served notice of this electronic filing to all counsel of record.

/s/ Hannah Swanson

Hannah Swanson*
Planned Parenthood Fed. of America
1110 Vermont Avenue NW, Suite 300
Washington, DC 20005
Tel.: (202) 803-4030
hannah.swanson@ppfa.org

**Special appearance filed*